

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Recommendation to Initiate	)	
A Show Cause Proceeding as to why	)	
Sundowner, Inc. should not be Required to	)	
Obtain a Certificate of Public Convenience	)	Docket No. 24-SUNW-590-SHO
and Necessity to Operate as a Potable Water	)	
Utility, and an Emergency Order Enforcing	)	
Cold Weather Rules for Meter Disconnections	)	
within Sundowner, Inc.'s Water Distribution	)	
System.	)	

**SUNDOWNER, INC. RESPONSE TO WELL REHAB, LLC., WALTON PLUMBING
AND HEATING, INC., AND WATERWISE ENTERPRISES, LLC.'S
PETITION TO INTERVENE**

COMES NOW, Sundowner, Inc. ("Sundowner") and submit its Response to the Petition to Intervene of Well Rehab LLC., Walton Plumbing & Heating Inc., and WaterWise Enterprises, LLC. ("Petitioners"). In support of its Response, Sundowner states as follows:

1. On May 10, 2024, Sundowner filed its Application for Certificate of Convenience and Necessity and Response to the Show Cause Order ("Application"), seeking approval of a Certificate of Public Convenience and Necessity ("Certificate").¹ In the Application, Sundowner stated its intention to file a rate case with the Commission upon approval of its Certificate.

2. Petitioners filed their Petition to Intervene ("Petition") on September 26, 2025, nearly 17 months after the filing of the Application.

3. In support of their Petition, Petitioners state that they have provided "goods and services to Sundowner, Inc...for the operation of the water system and sewer system," and that they were not paid on a current basis for such goods and services.²

¹ See Sundowner's Application for Certificate of Convenience and Necessity and Response to the Show Cause Order, KCC. Docket No. 24-SUNW-590-SHO (May 10, 2024).

² Petition to Intervene of Well Rehab LLC., Walton Plumbing & Heating Inc., and WaterWise Enterprises, LLC, KCC. Docket No. 24-SUNW-590-SHO (May 10, 2024) at ¶ 2 [hereinafter Petition to Intervene].

4. Petitioners also state that they have filed a lawsuit in Saline County District Court to foreclose on a “mortgage” signed by Scott Kolling, owner of Sundowner, Inc.³

5. Petitioners allege without explanation that the current proceeding “substantially affects” their ability to collect debt from Sundowner, Inc. Additionally, the Petitioners claim, without any explanation or evidence, that the “interests of justice and the customers of the water and sewer system will be served by granting the Petition.”

6. The Petition must be denied because it does not meet the legal requirements for intervention, nor does the Petition assert any issues of relevance that pertain to the question of whether Sundowner should be granted a Certificate.

7. K.A.R. 82- 1-225 states that the presiding officer shall grant a petition for intervention only if it meets certain conditions. K.A.R. 82-1-225(a)(2) includes the requirement that the petition state:

facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.

8. Additionally, the presiding officer may only grant a petition for intervention only if it determines that the intervention will not “impair the orderly and prompt conduct of the proceedings.”

9. The Petition fails to meet both of these requirements.

10. In an attempt to establish why their participation in these Application proceedings would provide the Commission relevant information, Petitioners simply assert facts regarding the history of their transactions with Sundowner without demonstrating how these proceedings for a

³ *Id.* at ¶ 3.

Certificate directly or substantially affect their interest in the alleged debt and purported mortgage.⁴

In other words, whether the Commission grants or denies Sundowner's Application for a Certificate has no impact on the question of whether Sundowner owes these companies money for their services.

11. Petitioners fail to assert what information, perspective, or benefit they would bring to these proceedings.

12. The existence of the purported debt is not new information for the Commission Staff or the Commission. Months ago, Sundowner acknowledged and disclosed to the Commission Staff its debt for goods and services in response to various discovery requests from the Commission Staff.⁵ Sundowner was forthright in acknowledging the debt as part of its effort to demonstrate to the Commission that it should approve a certificate and move to a proceeding whereby a new rate could be determined so that Sundowner could increase its revenue in order to have additional resources to operate the public utility and make the Petitioners whole.

13. The debt must be resolved regardless of whether a Certificate is issued to Sundowner. Therefore, it cannot be asserted that this proceeding is in any way determinative of whether or not that debt will be resolved.

14. Sundowner asserts that the failure to obtain a Certificate or any action taken by Petitioners to prevent the Commission from granting a Certificate will only handicap Sundowner's effort to meet any debt obligations it has.

⁴ Even if Petitioners assertions were valid, Petitioners do not provide the Commission a copy of the supposed mortgage so that the Commission could make an independent assessment of its validity.

⁵ See Sundowner's Responses to Discovery Request Nos. 26 –28, 35 (acknowledging debt due to Petitioners as part of expenses to be calculated into rate formula), and 38, KCC Docket No. 24-SUNW-590-SHO.

15. Sundowner explained in numerous discussions with Commission Staff that it must increase its rates in order to function as a financially stable public utility, which would include meeting prior debt obligations and assuming debt to maintain and update the water system as necessary to be in compliance with the applicable industry standards.

16. Notwithstanding the foregoing, Petitioners are asking the Commission to grant its Petition based on a newly filed foreclosure action in Saline County when a court of law has not issued a final opinion regarding the validity of the supposed “mortgage.” Seemingly, Petitioners are attempting to use the Commission to leverage its position in the District Court, which is an improper use of the proceedings herein.

17. The Commission does not have authority to adjudicate the merits of a foreclosure action, nor can it preemptively base its decision on whether to grant Sundowner a Certificate on its opinion of whether the foreclosure action in Saline County might be successful.

18. The Petition goes so far as to assert that Petitioners intend to seek a court-appointed receiver to operate the Sundowner system – a legal remedy that is only utilized in the “greatest emergency” and subpar compared to other possible remedies, such as selling the system or finding an investor.⁶ Kansas legal precedent is clear that receivership should only be utilized when “no other adequate remedy is available.”⁷

19. Although the Commission cannot legally assess the merits of the foreclosure action nor the appointment of a receivership, Sundowner points out this standard to demonstrate that

⁶ See *City of Mulvane v. Henderson*, 46 Kan App. 2d 113, 118 (Kan. App. 2011). “Our Supreme Court has advised that only in cases of greatest emergency are courts warranted in restricting a business or property by the appointment of a receiver. There must be some evidence that the appointment is necessary to prevent fraud or to save the subject of the litigation from material injury or to rescue it from threatened destruction.” *Id.*

⁷ *Id.* at 118. (citing *Browning v. Blair*, 169 Kan. 139, 145 (1950)).

Petitioners' proposed solution for collecting on its supposed debt is not reasonable or likely under Kansas law.

20. Additionally, Petitioners assert in their effort to intervene in this proceeding that the interest of justice and Sundowner's customers will be served by their intervention. The Petitioners, however, fail to put forth any evidence or facts that their own interests in this Docket are substantially affected by whether Sundowner receives a Certificate.

21. Moreover, Petitioners are not customers of Sundowner. As a result, Petitioners cannot intervene in this proceeding on behalf of Sundowner customers or have a basis to rightfully claim that their intervention will benefit Sundowner's customers.

22. Finally, the Commission should reject this Petition because the Petitioners' intervention would cause unnecessary delay.

23. Sundowner and Commission Staff have worked diligently over the last 17 months to find a resolution in this Docket.

24. Sundowner filed a Notice of Waiver of Statutory Deadline⁸ on October 31, 2024, to waive its right to a 180-day time frame for a Commission determination on its Certificate. Adding a new party with the possibility of new discovery and unnecessary procedural engagement could only prolong resolution of the issue at hand.

25. As the one-year anniversary of the Notice filing approaches, the efficiency of the proceedings will suffer.

26. Sundowner counsel recently met with Commission Staff, which claimed that they would be filing their Report and Recommendation during the beginning of October 2025.

⁸ Sundowner Notice of Waiver of Statutory Deadline, KCC Docket No. 24-SUNW-590-SHO (Oct. 31, 2024).

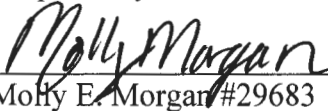
27. The failure to have a certificate has placed more burden on Sundowner with regard to repaying its debts to Petitioners because it has been delayed from obtaining a Certificate and thereafter filing a rate case to increase its rates.

28. Sundowner has been handicapped by these proceedings in some respects. The Commission's Show Cause Order, filed March 5, 2024, explicitly prohibited Sundowner from raising its rates until its rates have been approved by the Commission.⁹ Sundowner has established, and Commission Staff has effectively agreed, that the current rates are inadequate to support this public utility. Thus, further delay by allowing Petitioners to intervene will only exacerbate the Sundowner's current financial challenges.

29. To allow Petitioners' intervention in this proceeding would harm the orderly and prompt conduct of the proceedings, even more so if the proceedings are stagnant because the Commission is awaiting a determination by the Saline County District Court.

WHEREFORE, and for the reasons set forth herein, Sundowner, Inc. respectfully requests the Commission to deny Petitioners' Petition for Intervention and for such other and further relief as may be appropriate.

Respectfully submitted,



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ATTORNEYS FOR

⁹ Commission, Show Cause Order, KCC Docket No. 24-SUNW-590-SHO (March 5, 2024) at ¶ 5.

SUNDOWNER, INC.

VERIFICATION

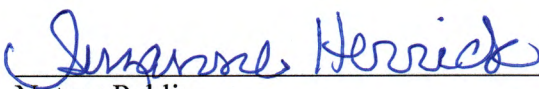
STATE OF KANSAS)
)
COUNTY OF SEDGWICK) ss:

Molly E. Morgan being duly sworn upon her oath deposes and says that he is the attorney for Sundowner, Inc.; that she is familiar with the foregoing Response; and that the statements therein are true and correct to the best of her knowledge and belief.



Molly E. Morgan

SUBSCRIBED AND SWORN to before me this 2nd day of October, 2025.



Notary Public

My Appointment Expires: 5/31/2029



CERTIFICATE OF SERVICE

I, the undersigned, certify that a true copy of the attached Response has been served to the following by means of electronic service on October 2, 2025.

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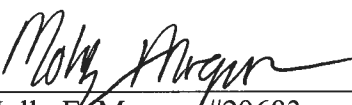
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